

**EXECUTIVE SUMMARY
RELATIONSHIP AMONG THE TIERS
Tied House Laws: Money's Worth and Ownership**

“Tied House” laws are intended to prevent inappropriate or coercive business practices among the various sectors of the liquor industry, either through domination of one tier over another or through exclusion of competitors’ products. **Washington’s cornerstone Tied House Statute, RCW 66.28.010(1)(a) addresses the two fundamental aspects of tied house laws:**

- The **prohibition against** manufacturers, importers, distributors and authorized representatives from owning or having a **financial interest in a retail license or owning property** on which a retailer operates; and
- The **prohibition against** manufacturers, importers, distributors and authorized representatives from **providing things of value** (“money or money’s worth”) to licensees.

Washington’s approach to changes in the business and social climate since the 1930s has been to carve out discrete, targeted legislative exceptions to these Tied House prohibitions as the need arises.

- Some industry members see this incremental approach to be a sound, conservative way to accommodate changes in the industry without compromising the foundational core of the Tied House statutes.
- Other industry members believe this approach has, over time, seriously eroded the foundation of the Tied House statute to the point where applying the statute and rules to actual business practices is impossibly convoluted and nearly unenforceable.
- Enforcement staff find the patchwork of exceptions difficult to explain and enforce.
- Public health and safety advocates fear that further loosening of the Tied House statutes – particularly as they relate to advertising – may have significant, negative consequences such as increased abusive consumption and underage drinking.
- And policymakers, facing an increasing numbers of requests for further exceptions, question whether it may be time for a more comprehensive set of revisions rather than continuing this piecemeal approach.

The impact of the state’s current Tied House statute, rules and multiple exceptions is wide ranging and can be difficult to summarize briefly because they span from what to some seems to be minutia, to issues involving national or international business interests, representing millions of dollars.

While Washington has adopted a conservative, incremental approach to modifying the statutes, other models are provided by the Federal government and other states. Unlike Washington’s regulations, the FAA Tied House regulations allow total ownership of a retailer, and allow partial ownership of a retailer provided there is no significant impact on competition. The FAA prohibits a number of activities that are also prohibited under Washington law (providing things of value to a retailer, paying for retailer advertising, for example) but **ONLY IF** the activity results in exclusion. Each state responding to the survey has adopted some form of tied house law that addresses both the ownership and money’s worth issues, but each state’s approach is unique with no single prevalent model.

OWNERSHIP AND FINANCIAL INTEREST

Washington’s Tied House statute prohibits suppliers (manufacturers, importers, distributors) from holding a financial interest in a retail licensee, from owning property on which a retailer is located; and from owning a retail license outright. The purpose of this prohibition has been to prevent the kind of practices that prompted Prohibition.

In the years since the Tied House statute was adopted, however, the business environment has changed dramatically and new forms of ownership and financial networks have emerged that were not contemplated in the 1930s. As a result, some types of business arrangements (and thus financial benefit) are prohibited today

even in circumstances where the opportunity for domination or control over the retailer is remote or controllable through other means.

MONEY OR MONEY’S WORTH: PROHIBITION AGAINST GIVING THINGS OF VALUE

Money’s Worth issues are a concern because suppliers and retailers have difficulty understanding where the line is drawn between allowed and prohibited activities, and as important, why the line is drawn where it is.

From a retailer perspective it is difficult to understand the rationale behind the rules at times, and with the various exceptions that have been granted they can be difficult to apply.

OPTION 1: No Change. Reaffirm the core principles of the Tied House statutes and limit or eliminate any opportunity for expansion of exemptions.

Potential Benefits: It is the known approach and industry participants generally understand it, and those who do not understand can be provided training. Requiring all exemptions to be run through the Legislative process ensures only narrow exceptions will be allowed and therefore the system will change only incrementally if at all.

Potential Drawbacks: The current system does not provide a good fit for today’s business environment, and political solutions to economic and business regulation issues will likely increase. Enforcement becomes increasingly difficult if the tied house regulatory system is further eroded.

OPTION 2: Relax current Tied House regulation and focus on regulating outcomes (such as monopolies, predatory sales practices or abusive consumption.)

Potential Benefits: May provide a more flexible regulatory system that can more readily adapt to changes in the business and the public health and safety environments. Allows more potential for free market forces to come to play and therefore may result in benefits to the consumer.

Potential Drawbacks: Enforcement would likely be difficult, and would require additional state resources to monitor. Clearly defining unwanted outcomes would require a change in the way regulation is applied and enforced.

OPTION 3: Give the LCB “de minimus” discretion, accompanied by some numerical criteria to allow overlapping financial interests (see the 1999 proposal). [Applies to Ownership component of the Tied House statute only.]

Potential Benefits: Provides some flexibility for ownership arrangements that are more typical in today’s business and financial environments, while still maintaining LCB oversight and ability to deny licenses where undesirable outcomes may result.

Potential Drawbacks: May be a slippery slope, and without clear boundaries, may be difficult for the LCB to draw a bright line around what is “de minimus.” If financial interests become too blurred between the tiers, the end result could be a reemergence of the pre-prohibition tied house “evils.” Caution would be required and a set of clear measures put in place to monitor whether these potentially negative outcomes are emerging.

OPTION 4: Eliminate Tied House statutes altogether, and focus solely on outcomes.

Potential Benefits: Would allow businesses to operate more efficiently and effectively. Focus on outcomes would eliminate some of the application of rules in ways that are perceived to be hyper technical or unreasonable, even if an undesirable outcome is not likely. More closely resembles the federal approach.

Potential Drawbacks: Would require more and different type of enforcement. The end result could be a reemergence of the pre-prohibition tied house “evils.” Caution would be required and a set of clear measures put in place to monitor whether these potentially negative outcomes are emerging.

RELATIONSHIP AMONG THE TIERS

Tied House Laws: Money's Worth and Ownership

References: RCW 66.28.010, 66.28.040; 66.28.042; 66.28.043; 66.28.150; 66.28.155; 66.28.190; 66.28.170; WAC 314-12-140, -145, -200, 314-13-020; 314-44-005, 314-52-040, 314-52-080, 314-52-085, 314-52-090, 314-52-113

ISSUE STATEMENT:

Washington's Tied House statute, which is meant to prevent inappropriate or coercive business practices among the various sectors of the liquor industry, has been modified over the past several decades.

- *Some industry members see this incremental approach to be a sound, conservative way to accommodate changes in the industry without compromising the foundational core of the Tied House statutes.*
- *Other industry members believe this approach has, over time, seriously eroded the foundation of the Tied House statute to the point where applying the statute and rules to actual business practices is impossibly convoluted and nearly unenforceable.*
- *Enforcement staff find the patchwork of exceptions difficult to explain and enforce.*
- *Public health and safety advocates fear that further loosening of the Tied House statutes – particularly as they relate to advertising – may have significant, negative consequences such as increased abusive consumption and underage drinking.*
- *And policymakers, facing an increasing numbers of requests for further exceptions, question whether it may be time for a more comprehensive set of revisions rather than continuing this piecemeal approach.*

Ever-growing demand for additional legislative exceptions to the Tied House statutes have prompted the LCB and the Legislature to consider whether the state's previous incremental approach to modification continues to be the best course of action, given the dramatic changes in the business and social climate in the past several decades.

BACKGROUND:

“Tied House” laws refer to statutes and rules adopted by virtually every state, and at the federal level, to regulate how alcoholic beverages are marketed and how the various tiers of the industry interact. These laws are designed to prevent inappropriate or coercive business practices among the various sectors of the liquor industry, either through domination of one tier over another or through exclusion of competitors' products.

As has been discussed in previous task force meetings, before Prohibition, it had become common practice for alcohol retailers to be closely controlled by large distillers and brewers, in effect to become “tied” to the more economically powerful suppliers. Control took the form of

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leases, chattel mortgages, credit and other financial interests. This control by the supplier level forced retailers to adopt programs to promote consumption and increased sales. These tied-houses sponsored activities fostered levels of beverage alcohol consumption that offended the moral and social values of many of the communities in which they were located. In other words, the suppliers' hands-on involvement in the retailing of alcohol created financial incentives to increase alcohol sales to levels that were perceived to be excessive and detrimental to both consumers and society as a whole.¹

Washington's cornerstone Tied House Statute, RCW 66.28.010(1)(a) addresses the two fundamental aspects of tied house laws:

- ✓ **The prohibition against manufacturers, importers, distributors and authorized representatives from owning or having a financial interest in a retail license or owning property on which a retailer operates; and**
- ✓ **The prohibition against manufacturers, importers, distributors and authorized representatives from providing things of value ("money or money's worth") to licensees.**

The full text of the statute is provided in Appendix A. The statute is supported by an array of agency-adopted rules that address specific types of restrictions or prohibitions.

The Tied House Statute was part of Washington's initial alcohol beverage distribution scheme adopted in the 1930s. Since that time the business and consumer environment has changed dramatically. For example:

- Highly complex, diversified ownership arrangements have developed that were never contemplated in the 1930s.
- Business transactions occur in a globalized marketplace beyond state geographical jurisdiction. (This raises difficult questions related to the state's policy goals. For example, for tax purposes, where does the transaction occur? Taxation has always occurred at the point of sale...where is the point of sale? When does the transaction occur?)
- Retail outlets have become significantly more diverse. Outlets have expanded from the traditional saloon or tavern to now include brew pubs, restaurants, stadiums, hotels, theme parks, private clubs, big box stores, convenience stores, etc.
- Manufacturers have multiplied into a diverse array of mostly small wineries and breweries, creating a highly competitive market and broad choice of product. And as the number of manufacturers has increased, the volume of product available has increased as well.
- Consumers have become more sophisticated, demanding and accustomed to diverse selection;
- The power of the supplier has been matched by the power of mega-retailers.

¹ *Alcohol Distribution Laws Bottle Up Options for Consumers and Retailers*, Morgan Smith, Georgia Public Policy Foundation (October 16, 2002).

Washington’s approach to these changes has been to carve out discrete, targeted legislative exceptions as the need arises. Numerous exceptions have been granted since the 1930s. For example, Bass PLC (Public Limited Company) owns both Bass Hotels (including the Holiday Inn hotel chain) and Bass Ale. Holiday Inns wanted to be able to hold a license to sell alcohol on their premises, but because Bass Ale is a manufacturer the state was unable to issue a retail license. The legislature adopted a narrowly drawn exception to allow a corporation to have an ownership interest in both a brewery and a retail license, under limited circumstances.² (A list of many of the exceptions is included in Appendix B.)

- Some industry members see this incremental approach to be a sound, conservative way to accommodate changes in the industry without compromising the foundational core of the Tied House statutes.
- Other industry members believe this approach has, over time, seriously eroded the foundation of the Tied House statute to the point where applying the statute and rules to actual business practices is impossibly convoluted and nearly unenforceable.
- Enforcement staff find the patchwork of exceptions difficult to explain and enforce.
- Public health and safety advocates fear that further loosening of the Tied House statutes – particularly as they relate to advertising – may have significant, negative consequences such as increased abusive consumption and underage drinking.
- And policymakers, facing an increasing numbers of requests for further exceptions, question whether it may be time for a more comprehensive set of revisions rather than continuing this piecemeal approach.

The impact of the state’s current Tied House statute, rules and multiple exceptions is wide ranging and can be difficult to summarize briefly because they span from what to some seems to be minutia, to issues involving national or international business interests, representing millions of dollars. Advertising restrictions, for example, that flow from the prohibition against providing a retailer “money or money’s worth” can get hyper-technical. For example, a retailer may be allowed to display a neon light provided by a supplier UNLESS the neon light provides ambient light in which case it is allowing the retailer to use less of its own lighting and therefore becomes a “thing of value” to the retailer (in which case it is prohibited). On the other hand, advertising restrictions also currently prohibit Sports and Entertainment Facilities from entering into multimillion dollar deals for “naming rights” of sports fields or clubs located within the sport or entertainment venue. See “Scenario 1 – Naming Rights” for a more detailed discussion of this issue, including industry and public health and safety perspectives on this form of advertising.

OTHER MODELS

Washington is not alone in dealing with the growing complexity of tied house issues. While Washington has adopted a conservative, incremental approach to modifying the statutes, other models are provided by the Federal government and other states. Each state responding to the

² The exemption is available, provided the corporate entity does not influence its related business activities or offers for sale any liquor products that are produced or distributed by a subsidiary.

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survey has adopted some form of tied house law that addresses both the ownership and money's worth issues, but each state's approach is unique with no single prevalent model.

Federal Alcohol Administration Act (FAA):

The Federal government also regulates the relationships between and among suppliers and retailers, through the Federal Alcohol Administration Act (FAA). The FAA includes provisions to preclude unfair trade practices, similar to Washington's Tied House statute. These provisions regulate practices such as exclusive outlets (an exclusive outlet is a practice by which a supplier *requires* a retailer to purchase its alcohol beverages) and tied house arrangements (a practice whereby a supplier *induces* a retailer to purchase its alcohol beverages).

Unlike Washington's regulations, the FAA Tied House regulations allow total ownership of a retailer, and allow partial ownership of a retailer provided there is no significant impact on competition. The FAA prohibits a number of activities that are also prohibited under Washington law (providing things of value to a retailer, paying for retailer advertising, for example) but **ONLY IF** the activity results in exclusion. Exclusion means that a practice:

- must **place a retailer's independence at risk** by means of a tie or link between the supplier and the retailer; AND,
- that such practice results in the **retailer purchasing less that it would have of a competitor's product.**

A key distinction between the FAA and Washington's Tied House statutes is that proving a violation of the FAA is difficult because violations under the FAA require proving the practice resulted in exclusion. Proving this can be very difficult (particularly proving the practice resulted in an impact on the retailer's purchasing.)

OWNERSHIP AND FINANCIAL INTEREST

Washington's Tied House statute prohibits suppliers (manufacturers, importers, distributors and authorized representatives) from holding a financial interest in a retail licensee, from owning property on which a retailer is located; and from owning a retail license outright. (Exceptions to this strict prohibition have been granted and are discussed below.) The purpose of this prohibition has been to prevent the kind of practices that prompted Prohibition.

In the years since the Tied House statute was adopted, however, the business environment has changed dramatically and new forms of ownership and financial networks have emerged that were not contemplated in the 1930s. As a result, **some types of business arrangements (and thus financial benefit) are prohibited today even in circumstances where the opportunity for domination or control over the retailer is considered by some to be remote or controllable through other means.** During stakeholder interviews, one stakeholder described a circumstance when a retail license had been denied because one of the financial backers was a national insurance company and one of the insurance company's board of directors held an interest in an out-of-state winery. The Bass Ale exception is an example of where the legislature incorporated safeguards into the statute to significantly reduce the opportunity for unwanted behavior to occur (or if it does occur, jeopardizes the retail license). That exception allows the overlapping ownership.

One of the most prominent issues related to this Tied House restriction in Washington today is the impact on sports and entertainment facilities. These entities would like to be able to sell the “naming” rights for a sports and/or entertainment facility (or a club located within such a facility) to an alcohol beverage manufacturer. This practice is allowed in some other states (see, for example, Coors Field in Colorado, and the Miller Club/Bud Zone at the Iowa Events Center.) Scenario 1 describes this issue in more detail.

In 1999, the LCB convened a review panel to consider changes to the three-tier system, including Tied House statute’s prohibition against overlapping financial interests among the tiers. That review panel considered two approaches to this issue that are used in other states. The first alternative proposed by the review panel would permit “de minimus” overlapping ownership interest, in which the arrangement would be permitted with certain safeguards in place (similar to the approach used with Bass Ale.) The second approach allows a certain numerical criteria for overlapping ownership – for example, up to 5% of stock ownership could be allowed, or no more than 10% of the product sold by the retailer in question could be from the interested manufacturer. A summary of alternative tied house laws considered by the 1999 review panel is provided as a separate handout.

MONEY OR MONEY’S WORTH: PROHIBITION AGAINST GIVING THINGS OF VALUE

Money’s Worth issues are a concern because suppliers and retailers have difficulty understanding where the line is drawn between allowed and prohibited activities, and as important, why the line is drawn where it is. For example, a retailer hosting a wine tasting showcasing a particular winery may ask the wine maker to be present and to provide education both to the retailer’s staff and to consumers about the particular wine. The winery may also provide a small amount of product for sampling. The winemaker, however, is NOT allowed to help pour the wine being sampled (that would free up the retailer’s staff for other duties and thus be considered giving the retailer “value”). See “Scenario 2 – Money’s Worth and the Wine Industry” for additional examples of this issue and the perspectives on providing value to retailers.

From a retailer perspective it is difficult to understand the rationale behind the rules at times, and with the various exceptions that have been granted they can be difficult to apply. The purpose of these rules is to ensure that suppliers cannot control, through economic inducement, the actions of the retailer. It is difficult for industry participants to understand how accepting matchbooks or coasters from a supplier can reasonably be expected to translate into that type of control. From an enforcement standpoint, the coasters represent a slippery slope. While one box may not represent an inducement, one hundred thousand may. And, with the exceptions that have been granted, the once bright line between accepted and prohibited practices has become somewhat blurred.

Common Tied House examples that the LCB enforcement officers have had to say “no” to that manufacturers or retailers do not always understand:

- Wineries want to take their product on the road and sell to hotels/restaurants beyond their licensed location(s). This is a violation of their license that allows them to sell at retail from their licensed locations only.

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- Manufacturer wants to be able to give product away for sampling, as part of their marketing strategy. For example, if a Specialty Wine Shop purchases three cases, the manufacturer may want to give them a case for free for wine tastings or to give to customers as samples.
- Breweries want to enter into agreements with retailers to provide sponsorships, rebates, or contests at the retail establishment. For example, Restaurant A wants to have a basketball hoop shoot contest and offer a \$10,000 prize to bring customers in. Instead of having \$10,000 cash on hand in case someone wins, a third-party agent may be willing to take a \$1,000 bond and take the risk that the shooter will actually make the shot. A manufacturer supplying beer to Restaurant A may want to pay the \$1,000 to the third party assuming that does not violate the Tied House rules. However, it provides value to the retailer since the retailer would no longer have to put up the \$1,000 itself. Therefore it is a violation.
- Advertising wine tastings at restaurants. A winery may want to advertise if a local retailer is featuring the winery's product at a wine dinner. This provides free advertising for the retailer and would be prohibited.
 - The winery can be at the wine dinner and provide education to those attending, but may not pour the product, nor may they take orders at the event.
 - A winery may also list on their website the retailers that carry their product, but may NOT put a hotlink to that retailer's website on the winery's web site.

ENFORCEMENT OF TIED HOUSE STATUTES:

The LCB has five enforcement officers dedicated to the enforcement of Tied House laws and rules, and other issues related specifically to Manufacturers, Importers and Wholesalers (Distributors). These five agents are responsible for monitoring and enforcing these rules across all three tiers, including approximately 1,900 in-state and out-of-state manufacturers, COAs, authorized representatives, and foreign importers, 150 distributors, and 12,000 retailers.

CURRENT REGULATIONS' CONTRIBUTION TO STATE'S POLICY GOALS:

1. Does the state's current Tied House statutes and rules contribute to the state's policy goal of preventing the misuse of alcohol? If yes, how?

Yes, strict adherence to the Tied House statutes, and allowing only narrowly drawn exceptions through the legislative process, continues to restrict the availability of alcohol, limits beer and wine advertising opportunities and constrains the impact of social norming that may contribute to increased abusive consumption. In addition, the Tied House statutes have set distinct boundaries that tend to constrain illegal activities. (As an analogy, if the speed limit is 60 MPH, a person may be willing to drive at a slightly higher speed – say 70 – even if it is not legal, but they are far less likely to drive at 90 MHP.)

2. Does the state's current Tied House statutes and rules contribute to the state's policy goal of efficient collection of taxes? If yes, how?

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Does not contribute to or detract from the state's goal of efficient collection of taxes.

3. Does the state's current Tied House statutes and rules promote the public interest in fostering the orderly and responsible distribution of malt beverages and wine towards effective control of consumption? If yes, how?

Yes, the Tied House prohibition against overlapping ownership interests across the tiers contributes to keeping the supplier roles (manufacturer, importer, and distributor) separate and distinct from the role of the retail tier, and helps to keep suppliers from exerting undue influence on the retail tier to exclude competitor's products from the marketplace.

CURRENT SYSTEM IMPACT ASSESSMENT:

Note: This impact assessment is offered to stimulate productive discussion and is based on feedback received from industry participants, a brief review of relevant materials and research literature. It is not intended to provide an exhaustive assessment of all potential impacts. The impacts identified have not be thoroughly tested or evaluated.

The following assessment reflects the impacts of the current Tied House system of regulation as opposed to no regulation of ownership interests or providing items of value to retailers. It does not compare the current system to alternative systems of control or regulation, such as increased emphasis on controlling for outcomes such as overserving or underage drinking.

CONSUMER	BUSINESS	STATE	SOCIETY
<i>(price, convenience, selection)</i>	<i>(costs, unnecessary market restrictions, revenues, private employment)</i>	<i>(state resources, state sales and tax revenues, state employment)</i>	<i>(alcohol misuse, youth access to alcohol, environmental pressures encouraging misuse)</i>
Maintains higher prices because free market influences are diminished by the various prohibitions. According to many industry participants, these restrictions also serve to maintain product diversity by prohibiting practices designed to exclude competitor's products.	Restricts free market influences by prohibiting some firms from entering into financial and ownership arrangements that may otherwise have positive economic results for the firm (and in some cases, such as public stadiums, some would argue positive economic results for the community.) Reduces industry	A small number of state employees are devoted to monitoring and enforcing trade practices that could otherwise be assigned to monitoring and enforcing outcome-based activities (e.g., overserving and serving underage drinkers). Some sales tax revenues might be lost because sales are lower with the money's worth provisions in place,	Prohibiting overlapping financial interests and ownership, and limiting opportunities for providing inducements to purchase a manufacturer's product help prevent the type of domination and coercion seen pre-prohibition. Limiting marketing and advertising practices reduces the potential

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	participants’ ability to conduct marketing and advertising that in other industries may be acceptable.	but this is likely off-set by the fewer state resources devoted to enforcing and treating abusive consumption.	for overserving, and underage drinking.
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POLICY OPTIONS

*NOTE: These options are offered to stimulate discussion. **They are not necessarily the best or only alternatives available.** The analysis of potential benefits and drawbacks represents our best efforts at assessing impacts based on feedback received from industry members, and a brief review of relevant literature. They have not been thoroughly tested or evaluated.*

	Consumers	Business	State	Society
Option 1	NC	NC	NC	NC
Option 2	NC	+	--	--
Option 3	+	+	--	--
Option 4	+	+	--	--

OPTION 1: No Change. Reaffirm the core principles of the Tied House statutes and limit or eliminate any opportunity for expansion of exemptions.

Potential Benefits: It is the known approach and industry participants generally understand it, and those who do not understand can be provided training. Requiring all exemptions to be run through the Legislative process ensures only narrow exceptions will be allowed and therefore the system will change only incrementally if at all.

Potential Drawbacks: The current system does not provide a good fit for today’s business environment, and political solutions to economic and business regulation issues will likely increase. Enforcement becomes increasingly difficult if the tied house regulatory system is further eroded.

OPTION 2: Relax current Tied House regulation and focus on regulating outcomes (such as monopolies, predatory sales practices or abusive consumption.)

Potential Benefits: May provide a more flexible regulatory system that can more readily adapt to changes in the business and the public health and safety environments. Allows more potential for free market forces to come to play and therefore may result in benefits to the consumer.

Potential Drawbacks: Enforcement would likely be difficult, and would require additional state resources to monitor. Clearly defining unwanted outcomes would require a change in the way regulation is applied and enforced.

OPTION 3: Give the LCB “de minimus” discretion, accompanied by some numerical criteria to allow overlapping financial interests (see the 1999 proposal). [Applies to Ownership component of the Tied House statute only.]

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Potential Benefits: Provides some flexibility for ownership arrangements that are more typical in today's business and financial environments, while still maintaining LCB oversight and ability to deny licenses where undesirable outcomes may result.

Potential Drawbacks: May be a slippery slope, and without clear boundaries, may be difficult for the LCB to draw a bright line around what is "de minimus." If financial interests become too blurred between the tiers, the end result could be a reemergence of the pre-prohibition tied house "evils." Caution would be required and a set of clear measures put in place to monitor whether these potentially negative outcomes are emerging.

OPTION 4: Eliminate Tied House statutes altogether, and focus solely on outcomes.

Potential Benefits: Would allow businesses to operate more efficiently and effectively. Focus on outcomes would eliminate some of the application of rules in ways that are perceived to be hyper technical or unreasonable, even if an undesirable outcome is not likely. More closely resembles the federal approach.

Potential Drawbacks: Would require more and different type of enforcement. The end result could be a reemergence of the pre-prohibition tied house "evils." Caution would be required and a set of clear measures put in place to monitor whether these potentially negative outcomes are emerging.

APPENDIX A:

RCW 66.28.010

Manufacturers, importers, distributors, and authorized representatives barred from interest in retail business or location — Advances prohibited — "Financial interest" defined — Exceptions.

(1)(a) No manufacturer, importer, distributor, or authorized representative, or person financially interested, directly or indirectly, in such business; whether resident or nonresident, shall have any financial interest, direct or indirect, in any licensed retail business, unless the retail business is owned by a corporation in which a manufacturer or importer has no direct stock ownership and there are no interlocking officers and directors, the retail license is held by a corporation that is not owned directly or indirectly by a manufacturer or importer, the sales of liquor are incidental to the primary activity of operating the property as a hotel, alcoholic beverages produced by the manufacturer or importer or their subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation or the retail licensee; nor shall any manufacturer, importer, distributor, or authorized representative own any of the property upon which such licensed persons conduct their business; nor shall any such licensed person, under any arrangement whatsoever, conduct his or her business upon property in which any manufacturer, importer, distributor, or authorized representative has any interest unless title to that property is owned by a corporation in which a manufacturer has no direct stock ownership and there are no interlocking officers or directors, the retail license is held by a corporation that is not owned directly or indirectly by the manufacturer, the sales of liquor are incidental to the primary activity of operating the property either as a hotel or as an amphitheater offering live musical and similar live entertainment activities to the public, alcoholic beverages produced by the manufacturer or any of its subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation of the retail licensee. Except as provided in subsection (3) of this section, no manufacturer, importer, distributor, or authorized representative shall advance moneys or moneys' worth to a licensed person under an arrangement, nor shall such licensed person receive, under an arrangement, an advance of moneys or moneys' worth. "Person" as used in this section only shall not include those state or federally chartered banks, state or federally chartered savings and loan associations, state or federally chartered mutual savings banks, or institutional investors which are not controlled directly or indirectly by a manufacturer, importer, distributor, or authorized representative as long as the bank, savings and loan association, or institutional investor does not influence or attempt to influence the purchasing practices of the retailer with respect to alcoholic beverages. Except as otherwise provided in this section, no manufacturer, importer, distributor, or authorized representative shall be eligible to receive or hold a retail license under this title, nor shall such manufacturer, importer, distributor, or authorized representative sell at retail any liquor as herein defined. A corporation granted an exemption under this subsection may use debt instruments issued in connection with financing construction or operations of its facilities.

(b) Nothing in this section shall prohibit a licensed domestic brewery or microbrewery from being licensed as a retailer pursuant to chapter [66.24](#) RCW for the purpose of selling beer or wine at retail on the brewery premises and nothing in this section shall prohibit a domestic winery from being licensed as a retailer pursuant to chapter [66.24](#) RCW for the purpose of selling beer or wine at retail on the winery premises. Such beer and wine so sold at retail shall be subject to the taxes imposed by RCW [66.24.290](#) and [66.24.210](#) and to reporting and bonding requirements as prescribed by regulations adopted by the board pursuant to chapter [34.05](#) RCW, and beer and wine that is not produced by the brewery or winery shall be purchased from a licensed beer or wine distributor.

(c) Nothing in this section shall prohibit a licensed distiller, domestic brewery, microbrewery, domestic winery, or a lessee of a licensed domestic brewer, microbrewery, or domestic winery, from being licensed as a spirits, beer, and wine restaurant pursuant to chapter [66.24](#) RCW for the purpose of selling liquor at a spirits, beer, and wine restaurant premises on the property on which the primary manufacturing facility of the licensed distiller, domestic brewer, microbrewery, or domestic winery is located or on contiguous property owned or leased by the licensed distiller, domestic brewer, microbrewery, or domestic winery as prescribed by rules adopted by the board pursuant to chapter [34.05](#) RCW.

(d) Nothing in this section prohibits retail licensees with a caterer's endorsement issued under RCW [66.24.320](#) or

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66.24.420 from operating on a domestic winery premises.

(e) Nothing in this section prohibits an organization qualifying under RCW 66.24.375 formed for the purpose of constructing and operating a facility to promote Washington wines from holding retail licenses on the facility property or leasing all or any portion of such facility property to a retail licensee on the facility property if the members of the board of directors or officers of the board for the organization include officers, directors, owners, or employees of a licensed domestic winery. Financing for the construction of the facility must include both public and private money.

(f) Nothing in this section prohibits a bona fide charitable nonprofit society or association registered as a 501(c)(3) under the internal revenue code and having an officer, director, owner, or employee of a licensed domestic winery or a wine certificate of approval holder on its board of directors from holding a special occasion license under RCW 66.24.380.

(g) Nothing in this section prohibits domestic wineries and retailers licensed under chapter 66.24 RCW from jointly producing brochures and materials promoting tourism in Washington state which contain information regarding retail licensees, domestic wineries, and their products.

(h) Nothing in this section prohibits domestic wineries and retail licensees from identifying the wineries on private labels authorized under RCW 66.24.400, 66.24.425, and 66.24.450.

(i) Until July 1, 2007, nothing in this section prohibits a nonprofit statewide organization of microbreweries formed for the purpose of promoting Washington's craft beer industry as a trade association registered as a 501(c) with the internal revenue service from holding a special occasion license to conduct up to six beer festivals.

(2) Financial interest, direct or indirect, as used in this section, shall include any interest, whether by stock ownership, mortgage, lien, or through interlocking directors, or otherwise. Pursuant to rules promulgated by the board in accordance with chapter 34.05 RCW manufacturers, distributors, and importers may perform, and retailers may accept the service of building, rotating and restocking case displays and stock room inventories; rotating and rearranging can and bottle displays of their own products; provide point of sale material and brand signs; price case goods of their own brands; and perform such similar normal business services as the board may by regulation prescribe.

(3)(a) This section does not prohibit a manufacturer, importer, or distributor from providing services to a special occasion licensee for: (i) Installation of draft beer dispensing equipment or advertising, (ii) advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, or (iii) a special occasion licensee from receiving any such services as may be provided by a manufacturer, importer, or distributor. Nothing in this section shall prohibit a retail licensee, or any person financially interested, directly or indirectly, in such a retail licensee from having a financial interest, direct or indirect, in a business which provides, for a compensation commensurate in value to the services provided, bottling, canning or other services to a manufacturer, so long as the retail licensee or person interested therein has no direct financial interest in or control of said manufacturer.

(b) A person holding contractual rights to payment from selling a liquor distributor's business and transferring the license shall not be deemed to have a financial interest under this section if the person (i) lacks any ownership in or control of the distributor, (ii) is not employed by the distributor, and (iii) does not influence or attempt to influence liquor purchases by retail liquor licensees from the distributor.

(c) The board shall adopt such rules as are deemed necessary to carry out the purposes and provisions of subsection (3)(a) of this section in accordance with the administrative procedure act, chapter 34.05 RCW.

(4) A license issued under RCW 66.24.395 does not constitute a retail license for the purposes of this section.

(5) A public house license issued under RCW 66.24.580 does not violate the provisions of this section as to a retailer having an interest directly or indirectly in a liquor-licensed manufacturer.

[2006 c 330 § 28; 2006 c 92 § 1; 2006 c 43 § 1. Prior: 2004 c 160 § 9; 2004 c 62 § 1; 2002 c 109 § 1; 2000 c 177 § 1; prior: 1998 c 127 § 1; 1998 c 126 § 11; 1997 c 321 § 46; prior: 1996 c 224 § 3; 1996 c 106 § 1; 1994 c 63 § 1; 1992 c 78 § 1; 1985 c 363 § 1; 1982 c 85 § 7; 1977 ex.s. c 219 § 2; 1975-'76 2nd ex.s. c 74 § 3; 1975 1st ex.s. c 173 § 6; 1937 c 217 § 6; 1935 c 174 § 14; 1933 ex.s. c 62 § 90; RRS § 7306-90; prior: 1909 c 84 § 1.]

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APPENDIX B: EXCEPTIONS TO THE TIED HOUSE STATUTE (not exhaustive)

GENERAL RULE	
Prohibition against Manufacturer (M), Importer (I), Distributor (D) or Authorized Representative (AR) having a financial interest, direct or indirect, in a retailer's business or property on which the business is conducted. Prohibition against M, I, D, AR holding a retail license.	Prohibition against Manufacturer (M), Importer (I), Distributor (D) or Authorized Representative (AR) providing money or money's worth to a licensed retailer
EXCEPTIONS	
1930s: Breweries and Wineries authorized to distribute their own product to retailers.	1935: Allows M, I, D to furnish free samples of liquor to LCB to promote a sale.
1975: In-state wineries and breweries are allowed retail sales of their own products at their winery or brewery.	1933/1969: Allows M to give free samples at brewery/winery.
1975: Allows beer M to add retail license to sell beer other than its own production at brewery location.	1975: Allows M, I, D to build or restock, displays and inventories for the retailer and to rearrange displays of its own products.
1977: In-state wineries and breweries allowed to own a spirits, beer and wine restaurant on winery or brewery property.	1975: Allows M, I, D to provide point of sale materials and brand signs to retailer.
1982. Retailers allowed to have an interest in a business that provides bottling or canning services to a manufacturer.	1975: Allows M, I, D to provide "normal business services" approved by the board to a retailer.
1985: D who sells its business and becomes a retailer is allowed to receive payments from the sale under a real estate contract.	1981: Allows M, I, D to furnish free samples to retailers to promote a sale.
1985: A Common Carrier license (allowing a common carrier to retail alcohol to passengers) is not considered a retail license. (Add for a M that wanted to purchase a cruise line)	1982: Exempts banks and investors of the retailer as long as no influence is exerted over purchasing decisions of the retailer.
1996 (amended 1998): M allowed to have an indirect interest in property on which a retail liquor licensee does business and which is used for outdoor entertainment.	1982: Allows M, I, D to provide to special occasion retailer, beer tapping equipment or advertising.

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1998: A corporation allowed under certain circumstances to have an interest in both a licensed retailer and a licensed M.	1982: Allows M, I, D to provide non-profit special occasion retail licensees advertising and pouring of beer/wine at wine tasting event.
2000: In-state M allowed to have up to two off-site retail sales locations.	1988: Allows beer and wine D to sell non-liquor food products to retailers on 30-day credit.
2001: Licensed restaurants and private clubs may sell private label Washington wines “to go.”	1990: Allows M, I, D to provide tickets to athletic events and other entertainment and provide food and beverages at the event to a retailer.
2002: Allows in-state M or retailer to operate a spirits restaurant on property owned or leased by an in-state M.	1990: Allows M, I, D to provide food and beverage to retailer at business meeting.
2003: In-state Ms allowed to sell their bottled wine at farmers markets.	2006: Allows identification of winery on front of private labels.
2004: Allows a caterer to hold a retail license and operate at a winery.	2006: Allows joint promotion of Ms and retailers on tourism brochures.
2006: Allows construction of a wine promotion facility.	

APPENDIX C: Federal Alcohol Administration Act

27 United States Code, Chapter 8, Subchapter I, Section 205

(a) Exclusive outlet

[It shall be unlawful ...] To require, by agreement or otherwise, that any retailer engaged in the sale of distilled spirits, wine, or malt beverages, purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt beverages sold or offered for sale by other persons in interstate or foreign commerce, if such requirement is made in the course of interstate or foreign commerce, or if such person engages in such practice to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such requirement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce

(b) “Tied house”

[It shall be unlawful ...] To induce through any of the following means, any retailer, engaged in the sale of distilled spirits, wine, or malt beverages, to purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt beverages sold or offered for sale by other persons in interstate or foreign commerce, if such inducement is made in the course of interstate or foreign commerce, or if such person engages in the practice of using such means, or any of them, to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such inducement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce: (1) By acquiring or holding (after the expiration of any existing license) any interest in any license with respect to the premises of the retailer; or (2) by acquiring any interest in real or personal property owned, occupied, or used by the retailer in the conduct of his business; or (3) by furnishing, giving, renting, lending, or selling to the retailer, any equipment, fixtures, signs, supplies, money, services, or other thing of value, subject to such exceptions as the Secretary of the Treasury shall by regulation prescribe, having due regard for public health, the quantity and value of articles involved, established trade customs not contrary to the public interest and the purposes of this subsection; or (4) by paying or crediting the retailer for any advertising, display, or distribution service; or (5) by guaranteeing any loan or the repayment of any financial obligation of the retailer; or (6) by extending to the retailer credit for a period in excess of the credit period usual and customary to the industry for the particular class of transactions, as ascertained by the Secretary of the Treasury and prescribed by regulations by him; or (7) by requiring the retailer to take and dispose of a certain quota of any of such products.